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Nonprofit M&A 101: Roadmap for Successful Combinations

Raffa Learning Community

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Agenda

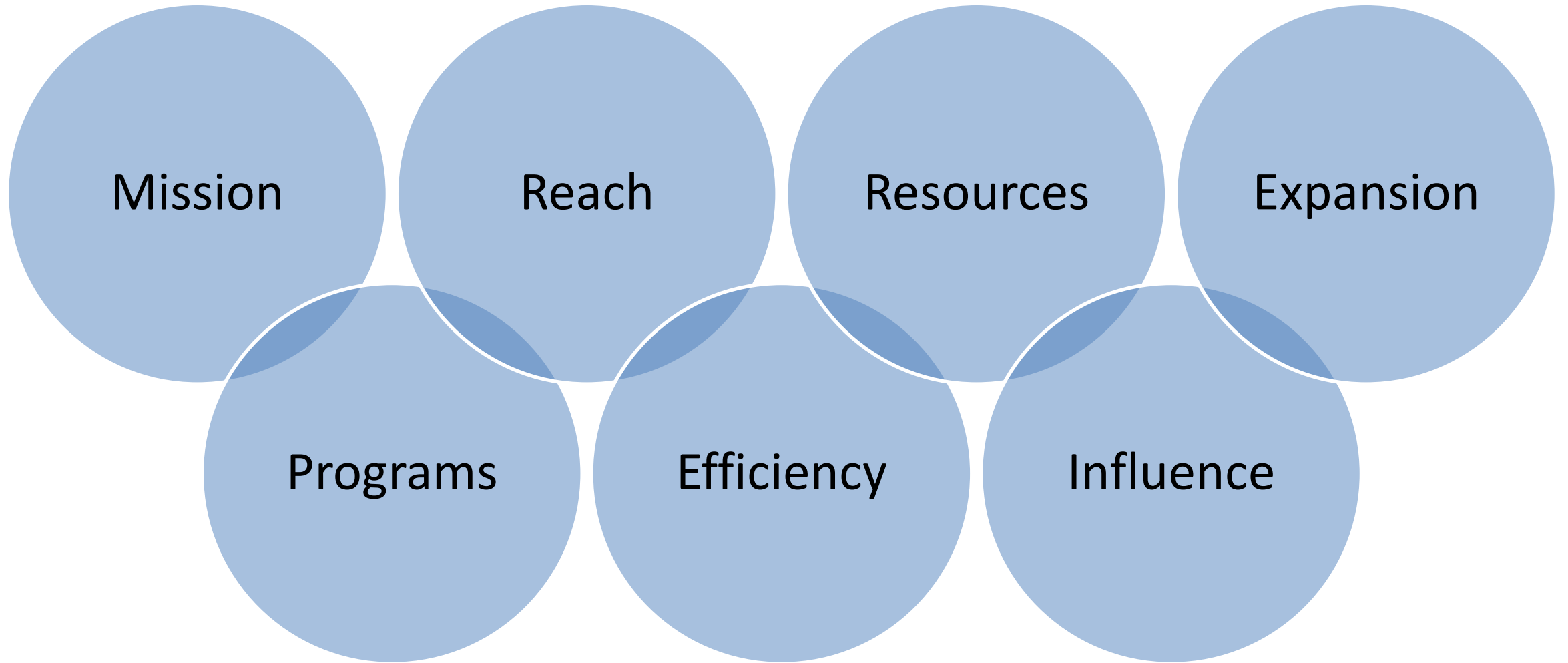
- Why Combine?
- Combination Types and Structures
- Roadmap of the Deal
- Governance
- Asset Types and Tax Considerations
- Integration
- Key Takeaways

Mergers and Acquisitions:

Corporate strategies where companies join forces, either by combining into a new entity (merger) or one purchasing another (acquisition) to accelerate growth, increase market share, or achieve synergies.

Nonprofits can do it too!

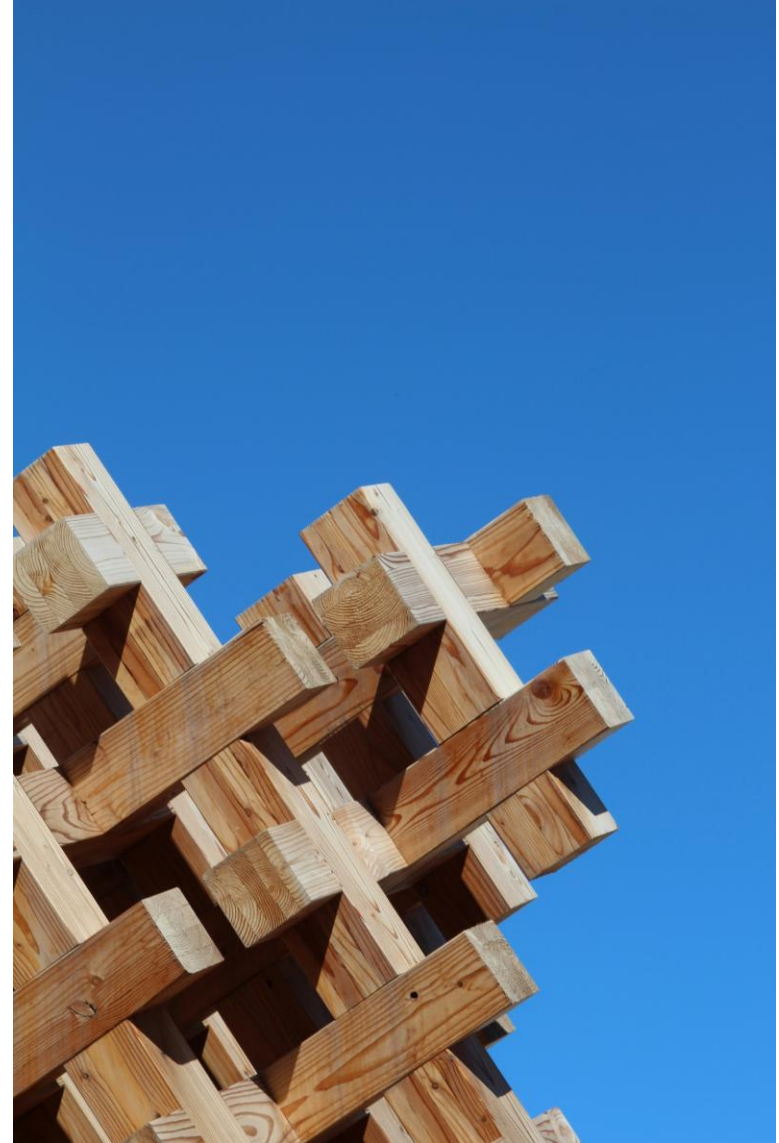
Why Combine?



Why Not to Combine?

- Benefit in specialization
- Governance and control
- Internal politics
- Tax inefficiency
- Sensitive assets or programs/certifications

Combination Types and Structures



Combination Types and Structures

Asset Transfer
& Dissolution

Statutory
Merger

Consolidation

Affiliation

Joint Ventures

Combination Types and Structures

Asset Transfer & Dissolution

- Target transfers certain assets to survivor, dissolves
- No transfer of liabilities, fewer state filings

Statutory Merger

- By operation of law, corporations combine, with one surviving
- All assets and liabilities transfer, more state filings

Consolidation

- New entity formed, both existing entities merge into it
- Less common

Affiliations

- Typically involves some common governance or control
- Can allow for shared staff and other resources

Joint Ventures

- By contract, each party contributes resources to shared goal
- Can involve creation of new entity with joint ownership

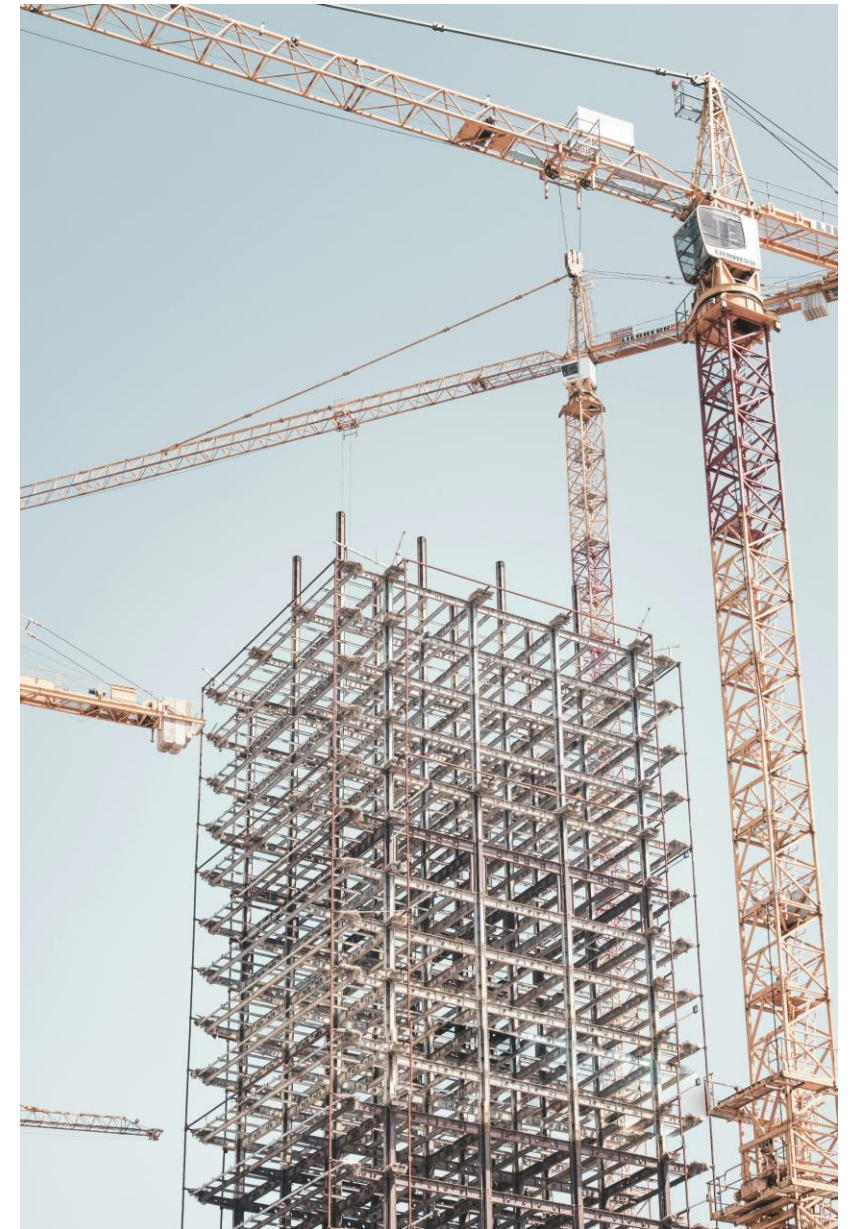
Affiliations and Joint Ventures

- Unlimited possibilities
- Flexible in duration, scope, control
- Can often be trial period before merger or acquisition
- Common affiliations and JVs:
 - Co-located or joint conferences
 - Advocacy coalitions
 - Joint investment in new initiative
 - Joint publications

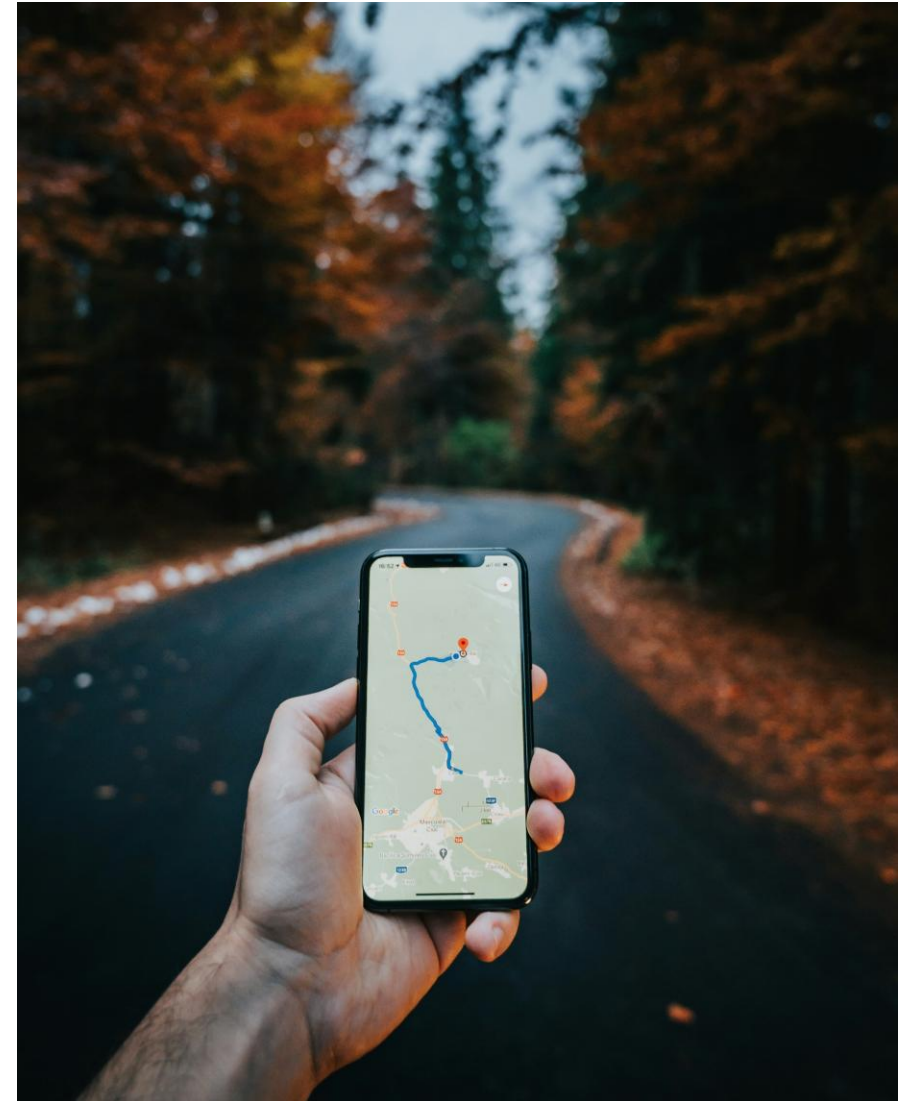


Choosing a Deal Structure

- The goals of the combination largely dictate the deal structure
- Consider:
 - Assumed liabilities
 - Member voting requirements in state law
 - Sensitive assets or programs (certifications, stock, real estate, etc.)



Roadmap of the Deal

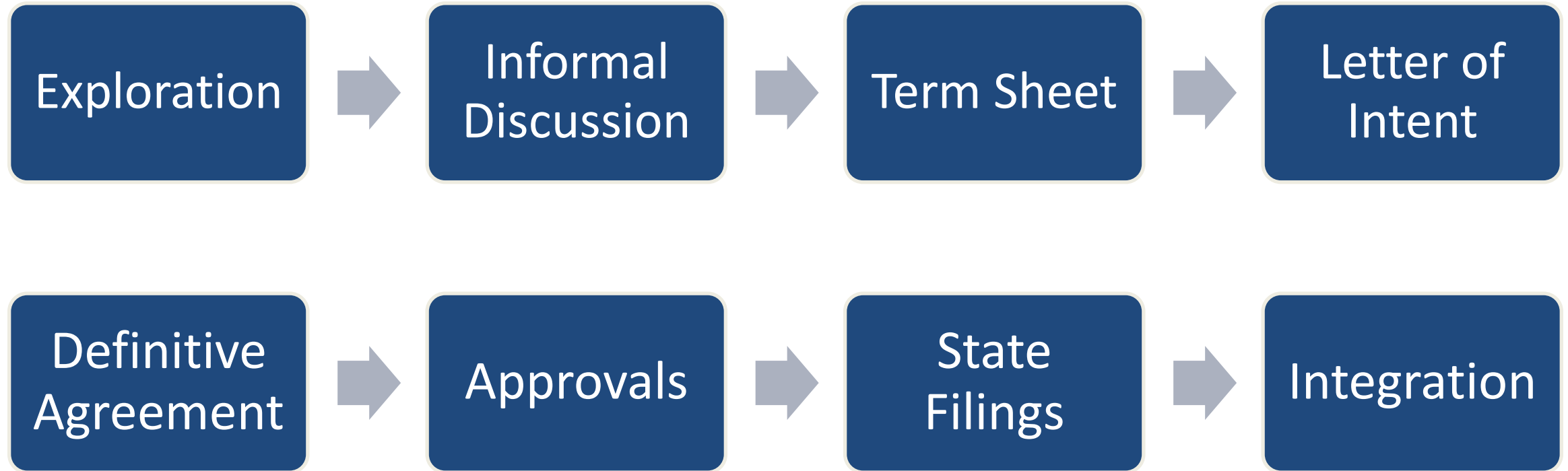


Roadmap of the Deal

- Deals are long and complex, not one-and-done legal agreement
- Timeline of three months to two years, depending on the size and structure.
- Strategic input from C-suite and Board
- Involves legal, finance, membership and operations functions



Roadmap of the Deal



Roadmap of the Deal

Exploration

- Strategic purpose - determine the “why”
- Identify potential targets

Informal Discussion

- Initial approach, testing the waters
- Nondisclosure agreement

Term Sheet

- List of top financial and governance terms, with minimal details

Letter of Intent

- Typically non-binding (with some exceptions)
- Parties agree to negotiate further

Roadmap of the Deal

Definitive Agreement

- Asset Transfer Agreement, Merger Agreement, etc.
- Due diligence, detailed legal agreement, binding

Approvals

- Board of Directors, membership, or both
- Requirements may vary by state and by deal type

State Filings

- Articles of Merger for statutory merger
- Articles of Dissolution for Asset Transfer/Dissolution

Integration

- Finances, programs, staff, governance, etc.
- Complete integration can take years

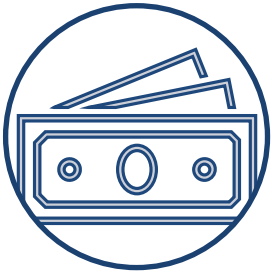
Other Considerations



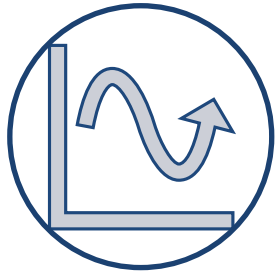
Governance

- Often the most critical terms of the transaction
- Survivor wants control, target wants autonomy
- Role of relationships and trust
- Board seats? Advisory council? Something else?
- Governance approvals – Board of Directors, membership votes
- Don't neglect the internal politics

Asset Types



Cash



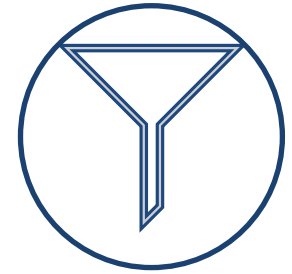
Receivables



IP



Contracts



Data

Tax Considerations



(c)(3) or (c)(6)?



Affiliated Entities



Restricted Assets



Revenue Analysis

Other Factors

- Employment
 - Executive employment agreements
 - Employees moving from one employer to another
 - Terminations
 - Benefit plans
- Contracts – target assigns contracts to survivor
- Government contracts and programs
- Membership structures, Bylaws revisions
- Identity of merged entity – name changes, trade names
- Legal filings – IP registrations, foreign corp. registrations

Integration and Common Challenges



Integration

- Clearly communicate the “why,” rooted in the mission
- Organize stakeholders – new committees, advisory groups, task forces, etc.
- Incentives – dues and events discounts, specialized programs, reserved leadership roles
- Activity and progress reports to key groups
- Clear staff roles and responsibilities, including existing staff and any brought on from target

Common Challenges

- Member and stakeholder communications
- Internal politics
- Organizational identity
- Volunteers as “owners”
- “Ours” vs. “theirs”
- Failure and separation – rare but possible



Key Takeaways

- Identify the strategic goals and the “why” – how does this deal serve the mission?
- The objectives of the deal dictate the structure
- Creative joint ventures as “dating” before marriage
- Long and complex process – leave enough time
- Start broad and on common ground, get increasingly more detailed and handle contentious issues
- Engage stakeholders early and often, don’t neglect internal politics
- Resist “ours vs. theirs” mentality in integration

Questions?

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